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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Daniel Peyrat

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EXAMINER

BEKKER, KELLY JO

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

12/17/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/517,817	Applicant(s) PEYRAT, DANIEL	
	Examiner KELLY BEKKER	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-7 and 12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-7 and 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Amendments made September 2, 2009 have been entered.
Claims 1, 3-7, and 12 remain pending.

Claim Rejections - 35 USC § 112nd Paragraph

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The previous 112 second paragraph rejections of claims 3-7 and 12 due to the recitation of "normal total baking time of the pie piece is" and the term "characterized in" have been withdrawn in light of applicant's amendments made September 2, 2009. The following 112 second paragraph rejections remain or were necessitated by applicant's amendments.

Claims 1, 3-7, and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites, "the shaped pastry dough having an edge maintained between the sides of the mold and the counter-mold". It is unclear as to what the term "maintained" means in context of the claims. It is unclear as to if the term means that the dough is not flattened by the molds, or if the term means that the edge is exposed to the atmosphere outside the molds, or if the term has some other meaning.

Claim Objections

The objection to claim 1 for the recitation "backed" has been withdrawn in light of applicant's amendments made September 2, 2009.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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Claims 1, 3, 4, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKee (US 5620731) in view of Schaible II et al (US 6365210 B1). The references and rejection are incorporated herein and as cited in the office action mailed April 2, 2009.

Regarding the newly added limitation that the intermediate product is designed for making a pie, quiche, or tart, both McKee and Schaible teach methods of forming par-baked dough products (see both abstracts); McKee in view of Schaible teach of a process for forming the intermediate product which is substantially the same as the instantly claimed process; thus, as the references of record teach of method step comprising substantially the same active method steps, including preparing, shaping, part baking, and freezing of a pastry dough, one of ordinary skill in the art at the time the invention was made would expect that the intermediate product as taught by the references of record be designed substantially the same and capable for the same functions as the instantly claimed product. It is noted that both references utilize pizza as an exemplary embodiment, however, that does not limit the teachings of the references.

Regarding the newly added limitation that the mold has a base and a peripheral side extending from the base, as stated in the office action, McKee is silent to the dough as shaped in a mold and to the mold as the baking pan, it would have been obvious to one of ordinary skill in the art at the time the invention was made to shape, transport, and bake the dough in a mold, including a mold with a base and a peripheral side extending from the base (Schaible Figure 6 reference characters 188 and 190) in order to form final products of the desired shape that were consistent, so that the dough would not be contaminated by processing belts and conveyors, and so that the dough did not dirty or necessitate cleaning of other processing equipment in view of Schaible.

Regarding the newly added limitation that the counter mold is perforated and has a base and a peripheral side extending from the base, the counter mold as taught by McKee has a base or central portion (Figure 1 reference 32 and Column 7 lines 32-38), a peripheral side or shoulder extending from the base (Figure 1 reference 34 and

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Column 7 lines 32-38), and perforations to allow stem to be evacuated during baking (Column 3 lines 1-32, Column 5 lines 40-55, and Column 6 lines 13-17).

Regarding the dough as having an edge maintained between the sides of the mold and the counter-mold, as discussed above, the claim limitations are unclear, however, as the references of record teach of a mold and a counter mold with substantially the same configurations, i.e. a base and a peripheral side extending from the base, wherein the dough is applied in the mold in substantially the same manner, i.e. placed in between the mold and counter mold, one of ordinary skill in the art at the time the invention was made would expect that the references of record meet the instantly ordinary imitations.

Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKee (US 5620731) in view of Schaible II et al (US 6365210 B1), further in view of McDonald et al (US 5256432). The references and rejection are incorporated herein and as cited in the office action mailed April 2, 2009.

Response to Arguments

Applicant's arguments filed September 2, 2009 have been fully considered but they are not persuasive.

Applicant argues that the references of record do not teach of the newly added claim limitations. Applicant's arguments are not convincing as the newly added limitations have been addressed above.

Specifically, regarding the newly added limitation that the intermediate product is designed for making a pie, quiche, or tart, applicant argues that the references teach of pizzas and therefore are not applicable to the instantly claimed invention. Applicant's argument is not convincing as both McKee and Schaible teach methods of forming par-baked dough products (see both abstracts); McKee in view of Schaible teach of a process for forming the intermediate product which is substantially the same as the instantly claimed process; thus, as the references of record teach of method step comprising substantially the same active method steps, including preparing, shaping,

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part baking, and freezing of a pastry dough, one of ordinary skill in the art at the time the invention was made would expect that the intermediate product as taught by the references of record be designed substantially the same and capable for the same functions as the instantly claimed product. Both references utilize pizza as an exemplary embodiment, however, that does not limit the teachings of the references. The applicant argues that there is distinction between pizza dough processing and pie, quiche, or tart dough processing, such as par-baking times and viscosity of fillings, however, none of the supposed distinctions appear to be reflected in the instantly claimed invention. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant argues that McKee and Schaible cannot be combined as the references have different objectives; stating that McKee suggest that it is critical that the counter mold have moisture vapor permeability while Schaible suggests to avoid excess dehydration of the dough. Applicant's argument is not convincing as Schaible teaches that dough cooked uncovered is not as desirable as dough cooked covered (Column 7 lines 19-28) and although McKee makes perforations in the counter mold to allow for moisture vapor permeability, the counter mold of McKee, in between the perforations would also prevent moisture release; thus although the counter mold of McKee allows the release of moisture it also prevents moisture loss and does not contradict the teachings of Schaible. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Bekker whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lien Tran/
Primary Examiner
Art Unit 1794

/Kelly Bekker/
Examiner
Art Unit 1794